IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 1136 of 2004 (M/B)
(Old No. 42/92)

Veer Singh S/o Sri Naubat Singh,
R/o Mohalla Fatehullah Ganj,
Thakurdwara, District Moradabad. …… Petitioner

Versus

1. Superintending Engineer,
   Irrigation Work Circle, Nainital.
2. Executive engineer, Kosi Construction Division,
   Ramnagar, District Nainital.
3. State of U.P.,
   through District Magistrate,
   Moradabad. …… Respondents

Mr. K.S. Bhaskar, Advocate for the petitioner.
Mr. N.C. Gupta, Standing Counsel for the respondents.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Prafulla C. Pant, J.

RAJEEV GUPTA, C.J. (Oral)

Mr. K.S. Bhaskar, Advocate for the petitioner.

Mr. N.C. Gupta, Standing Counsel for the respondents.

They are heard.

2. Petitioner Veer Singh had filed this writ petition in the year 1992 before the High Court of Allahabad for the following reliefs:

> "(a) to issue a writ, order or direction in the nature of writ of certiorari quashing the Recovery Memo issued by the respondent no. 2 and the Notice dated 22.10.1991, issued by the respondent No. 3 ANNEXURES VIII & IX respectively to this petition;
>
> (b) to issue a writ, order or direction in the nature of writ or mandamus directing the respondent no. 1 to appoint Arbitrator to get decide the matter according to law.
>
> (c) to issue a writ, order or direction in the nature of writ of mandamus directing the respondents not to

recover the amount of Rs. 1,04,321.13p. from the petitioner in pursuance of the letter issued by the respondent no. 2 to the District Magistrate, Mbd. (ANNEXURE NO. IX to this petition);

(d) to issue a writ, order or direction in the nature of writ of mandamus directing the respondents to pay the amount of Rs. 37,300 with interests to the petitioner;

(e) to issue any other suitable writ, order or direction in favour of the petitioner, which this Hon'ble Court may deem just and proper in the circumstances of the case; and for which the petitioner may be found entitled under law;

(f) to award the cost of this writ petition to the petitioner."

3. The petitioner's contention in substance appears to be that the amount sought to be recovered by the respondents from the petitioner is not justified, as the respondents themselves are to be blamed for the delay in performance of the contract.

4. The respondents, on the other hand in their counter affidavit, have sought to justify the recovery from the petitioner on the ground that he refused to perform the remaining part of the contract within the prescribed period.

5. Thus, it is apparent from the pleadings of the parties that the matter involves serious disputed questions of facts, which cannot be gone into in a petition under Article 226 of the Constitution of India.

6. In our opinion, it would be appropriate for the petitioner to work out his other remedies, which may be available to him for the redressal of the grievances projected in the writ petition.

7. With the above observation, the writ petition stands disposed of.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**
24.05.2006 24.05.2006

G